TESTIMONY OF

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before the

SENATE COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
SUBCOMMITTEE ON
SURFACE TRANSPORTATION AND MERCHANT MARINE

regarding

RAIL FREIGHT TRANSPORTATION

April 9, 1998
Hays, Kansas

Mr. Chairman my name is Kent Stamper and I am a producer from Plainville, Kansas. I am a member of the Board of Directors of Farmland Industries, Inc., Board Vice President of Midland Marketing Coop in Hayes, Kansas and it's former president. I am also a member owner of Farmers Union Coop of Stockton, Kansas. I am here today on behalf of Farmland Industries, Inc. and its producer/owners.

Farmland Industries, Inc., Kansas City, Missouri, is the largest farmer-owned cooperative in North America and one of the top 200 Fortune 500-listed companies. In 1997, company sales of $9.1 billion encompassed all 50 states and 80 countries. When including third-party sales of Farmland's venture businesses, total sales exceeded $11.7 billion. Focused on meeting the needs of its half million farmer-owners in the U.S., Canada and Mexico, Farmland is a highly diversified company with major business lines in crop production products, livestock feeds, petroleum, grain processing and marketing, and the processing and marketing of pork and beef products.

Farmland Industries' Grain Division and the cooperatives of Midland Marketing and Farmers Union along with other locals, have joined together in a limited liability company (L.L.C.) known as Westland Terminal L.L.C. to facilitate marketing and shipping of our producer owners' harvests.

Midland Marketing and Farmers Union Cooperatives have branches at the following locations:

	Rail Served By	Railcar Loading Capacity	Elevator Storage Capacity
Midland, Hays	UP	6	848,000
Hargrave	MP (CKRY)	5	259,000
Lacrosse	MP (CKRY)	5	720,000
McCracken	MP (CKRY)	10	470,000
Natoma	-- (NRS)	0	745,000
Plainville	UP	0	813,000
Toulon	UP	9	925,000
Yocemento	UP	8	801,000
Zurich	UP	0	1,033,000
Ogallah	UP	100	568,000
Farmers Union			
Stockton	MP (Kyle)	14	816,000
Woodston	MP (Kyle)	14	636,000

The ability of Farmland and its local cooperatives (member/owners) to move grain prior to and during the fall harvest of 1997 was extremely limited by poor rail service and equipment availability. This increased expenses significantly, creating many double handling situations, causing grain to be piled on the ground, creating additional condition problems and an inability to compete in many markets. The utilization and velocity of our rail cars in grain service dropped significantly and especially on the old SP/SSW lines acquired by UP. Shuttle train performance on the UP dropped from a guaranteed two trips/month to often one trip/month or less. While the shipper is sometimes compensated for this poor performance, the forwarding of harvest bushels to market or into terminal storage had a major financial impact.

Failure to transport grain on a timely and consistent basis dramatically impacts Farmland Industries, our owners, who are local coop members and producers. Bottom line, the negative impact has a major domino effect on all of us.

Farmland Industries and its members have also experienced extremely poor rail service in southern Kansas with virtually non existent service from OmniTrax on the old MOP line extending across the southern tier of the state. This line formerly carried 10-15 trains per day of mainline Union Pacific service between Pueblo, Colorado and Kansas City, Missouri, however was severed at the Kansas/Colorado border following the merger of Union Pacific/ Southern Pacific and subsequent sale to OmniTrax.

As an example, on July 22, 1997, our Scott City Coop ordered 88 cars for the subsequent two month period to be loaded outbound to free up storage space for the fall harvest. During September, the facility received 8 cars, less than 10% of the total order of cars. I am enclosing a copy of a report from Scott City as an attachment to this testimony. As a matter of interest, we estimate this loss to be about $46,000 during the two month period.

In summary, the 1997 harvest seriously impacted all Kansas grain shippers and producers negatively, particularly on the UP and Omnitrax (CKRY) lines, and to a lessor degree, those served by BNSF.

Currently, we do not see a significant improvement in rail service within the state of Kansas. As a result, we believe the spring/summer harvest will be difficult at best with no indication of service improvements. The larger this year’s crop, the larger the negative impact.

The recent announcement by UP/SP of an embargo on rail traffic to Mexico shows the seriousness of the problems they are having in providing adequate service to agriculture shippers. This action will reduce exports in the near term to a major U.S. customer, but more importantly this action threatens the United States in being considered a reliable supplier of agricultural products. The economic well being of American agriculture is dependent upon trade. This was especially emphasized with the passage of the 1996 Farm Bill.

The fact is, without rail to rail competition and without restoration of Class I service out of the central Kansas corridors, the lack of competitive balance will continue to negatively impact the grain industry in Kansas as well as most of the Midwest and continue to reduce net farm income for our producers.

Farmland Industries believes that the consolidation of the rail industry, and particularly the parallel consolidation of UP/SP and the subsequent service failures and market power of five major carriers (two in the west) has severely damaged agriculture, Farmland and its members.

This situation is the reason approximately 300 captive shippers recently traveled to Houston to meet with Union Pacific to plead for its service. Moreover, Burlington Northern recently testified that more than one-half of BN's customers are captive to it. These railroads have enormous market power, and they use it.

Farmland's Plan for Increasing Rail Competition. Farmland believe the existing law must be changed to promote competition through fundamental structural changes in the railroad industry rather than through regulation. In fact, Farmland considers deregulation and competition to be the most effective approaches to rectify serious problems in the current law and regulatory policy. However, captive customers need regulatory relief if they cannot secure competitive options. Farmland members are captive to UP and to BNSF at various locations for many of their shipments.

Transportation Costs Are Not Declining. Farmland is concerned that the Surface Transportation Board believes that rates are declining. The data used do not support the conclusion. The "revenues" used are only those paid to the railroads, but shippers now pay direct charges railroads used to include in rates, such as for cars and equipment. Moreover, "ton-miles" have increased substantially, so revenue per ton-mile does not measure what shippers pay.

Because revenue per ton-mile has been declining since 1935 at about the same pace as since 1980, the Board cannot conclude that the Staggers Act had anything to do with the continued decreases in revenue per ton-mile. In any event, the overall costs of transportation have increased for many shippers.

Farmland suggests the following improvements to the existing regulatory system applicable to the railroads:

1. Deregulation Through Shared Assets: Create a presumption against regulation in any "shared asset area" of the sort CSX and NS have agreed to in New Jersey, Philadelphia, and Detroit, and UP and BNSF have agreed to between Houston and New Orleans. Give the STB power to compel creation of "shared asset areas" where necessary to promote competition or address service problems. This would be particularly useful to promote competition in large population centers.

1. Simplified Rates Over "Bottleneck" Segments. Use average rates for the particular commodity, or average total cost (including a fair return), or a ceiling of 180 percent of variable costs (as Dr. Kahn recommends), to determine the rate over a "bottleneck" segment so that a shipper can have more than one serving

railroad. (An example would be that, in a rural area which is not appropriately made a “shared asset area”, a shipper who is dissatisfied with the rates or service now being experienced would be entitled to have a second railroad serve him and the shipper would be charged the average rate per ton-mile, or average total cost, or a ceiling of 180 percent of variable costs over the segment where only one railroad now serves.) To make this simple process work, the railroads must be required to publish promptly following each calendar quarter the necessary data, and certify it to the government. This information is now published by quarterly and commodity. In this manner, governmental determination of the rate over the “bottleneck” segment should be unnecessary. Arbitration could be used to expeditiously resolve any dispute.

1. Simplify “Market Dominance”. “Market dominance” is a prerequisite for STB jurisdiction over rail rates. The test now includes “product and geographic” competition disputes, which are highly complex. Instead of creating such complexity, which can require a great deal of time and resources to resolve, the law should be simplified to provide that, if a shipper has only one railroad serving an origin or destination or if the rate exceeds the existing “jurisdictional threshold” of 180% of the railroad’s “variable costs” (as defined by the STB), it is a captive shipper. A rate set at “full costs” of a railroad would equal about 150% of variable costs, so a rate at 180% already is well over full costs. There would be no reason for a shipper to come to Washington, D.C. to get a better rate or service if it can solve its problem in the competitive marketplace. But if the shipper does have to challenge a railroad’s rates, the process ought to be simple and quick. Competitive and dynamic businesses cannot wait years to know what their costs are.

1. Objective Service Standards. Also, the STB should establish objective standards for railroad service obligations, with a clear understanding which shippers are entitled to service first in the event that capacity is limited. Farmland suggests that the hierarchy should be: 1) contract shippers with service commitments; 2) shippers with neither a contract nor a “certificate of transportation” (“COT”), but whose service is otherwise “guaranteed”; 3) shippers issued COTs by carriers; and 4) shippers who ship in common carriage without service guarantees. At present, there is no set of rules to allocate scarce capacity.

1. Redress For Service Failures. Provide shippers with the right to seek redress for railroad service failures in all circumstances in the courts or at the STB. Service disputes for transportation under contract go to court now, as do claims for “loss or damage” to the shipper’s goods. But if a shipper is damaged by a service shortcoming or failure, as in the current Union Pacific crisis, at least one court has said that the STB should hear the dispute. Yet, the STB does not have the resources to handle any significant number of such claims, and has no Administrative Law Judges to hear them. The courts, rather than a regulatory agency, are the better forum for such damage claims. (Railroad car supply disputes should still go to the STB).

1. Repeal Railroad “Revenue Adequacy” Standards and Findings. Repeal the

railroad “revenue adequacy” standards in the law, and the obligation of the STB to perform annual railroad “revenue adequacy” determinations, while retaining the policy that railroads should earn adequate revenues, and the obligation to consider revenue adequacy when the STB prescribes a maximum reasonable rate. The effect would be to have the STB look at standard measures of revenue adequacy rather than its own, discredited findings.

1. Acquisition Premiums. The STB should be directed not to include acquisition premiums in any calculation of the “jurisdictional threshold,” or “maximum reasonable rate” on any railroad, given that other regulated industries are not allowed to force their captive customers to pay acquisition premiums when they acquire another company. CSX and NS paid (including assumption of obligations and debt) over $20 billion, according to their own witness in the Conrail proceeding, for Conrail, which had a market value of about $6.7 billion before CSX announced its merger agreement with Conrail. Captive shippers had nothing to say about the payment of the premium, and should not, therefore, be compelled to pay it. Otherwise, there would be no limit to rate increases based on such premiums in future railroad acquisitions.

1. Filing Fees. The current, outrageous filing fees (which can compel a shipper to pay as much as $27,000 to file a rate complaint, and which fee may rise to well over $200,000) should be eliminated. Filing fees should be nominal, as they are in the court system and at other federal regulatory agencies. The Board should be paid for out of general revenues. If “user fees” must be charged, the best approach would be for shippers to pay the bill through a charge on each car shipped, so as not to discourage filing of appropriate pleadings. Alternatively, the regulated entity – here the railroads – should pay the fees, just as utilities do at the NRC, utilities and pipelines do at the FERC, etc. A railroad made to pay a few million dollars per year to pay for the STB’s budget (which is all that would be necessary) can easily spread that cost over all of its shippers, and it would be barely noticeable. Substantial filing fees discourage legitimate claims.

1. Emergency Authority and Alternatives. The STB’s authority to issue directed service orders of the sort in force against the Union Pacific expires after 270 days, i.e. August 2, 1998. The STB’s authority should be extended to one year, and if the service emergency is not resolved at the time, the STB should have the authority to impose permanent solutions to solve the problem, including divestitures.

1. The bottom line is that the time has long since come to subject the railroads to the free market, just as every other industry either is or is becoming. They will be better for it, and service will improve while rates decline. That has been the universal outcome in other industries, and there is no reason it cannot happen to the railroads. “Necessity is the mother of invention” and their substantial productivity over the last 18 years is proof of that. The railroad industry should not be the only industry which is neither effectively competitive nor effectively regulated.

Conclusion

The Surface Transportation Board should recommend to Congress that it adopt a competitive access regime for the railroad industry to replace the current costly, inefficient, understaffed and ineffective regulatory regime. Deregulation and competition are essential in order for shippers and carriers to resolve their problems in the marketplace. In so doing, Congress would serve shippers, the railroads, and the public interest.